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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/662,428	09/16/2003	Randall E. Aull	003797.00621	2075

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EXAMINER

PHAM, TAMMY T

ART UNIT PAPER NUMBER

2629

DATE MAILED: 12/04/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

10/662,428

Applicant(s)

AULL ET AL.

Examiner

Tammy Pham

Art Unit

2629

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 30 October 2006 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: _____.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: _____.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____.
13. ☐ Other: _____.


SUMATI LEFKOWITZ
SUPERVISORY PATENT EXAMINER

The following is a response to the arguments dated 10/30/2006.

CLAIM 1 (Page 16 of arguments) recites "automatically generating, at a repeat rate based on key force data for a key held pressed by a user, a third type keyboard data message indicating the held key has been pressed." According to the previous Office Action dated 8/22/2006; BARKER is shown to teach of a third type keyboard data message while TANAKA is shown to teach of the repeat rate.

Applicant argues that there is lack of sufficient motivation to combine with BARKER and TANAKA since both use the force data for different purposes since "BARKER uses that data to choose between two possible key scan data assigned to a particular key while TANAKA uses the force data to decide how frequently a data value assigned to a key is outputted."

Examiner would like to point out that "The test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference.... Rather, the test is what the combined teachings of those references would have suggested to those of ordinary skill in the art." In re Keller, 642 F.2d 413, 425, 208 USPQ 871, 881 (CCPA 1981). See also In re Sneed, 710 F.2d 1544, 1550, 218 USPQ 385, 389 (Fed. Cir. 1983) ("[I]t is not necessary that the inventions of the references be physically combinable to render obvious the invention under review."); and In re Nievelt, 482 F.2d 965, 179 USPQ 224, 226 (CCPA 1973) ("Combining the teachings of references does not involve an ability to combine their specific structures."). BARKER uses the force data to choose between two possible key scan data while TANAKA uses the force data to choose between two possible key scan outputs (each output at a different output rate). BARKER lacks teaching of a repeat rate while TANAKA clearly shows it.

CLAIM 5 (Page 17 of arguments) recites "receiving a data set having key identification data and key force data for multiple keys." According to the previous Office Action, BARKER is shown to teach this claim limitation. Similarly, CLAIM 14 (Page 18 of arguments) recites "receiving a keyboard data set reporting; for multiple keys of the plurality pressed by a keyboard user, key force data and key identification data."

Applicant argues that "nothing in BARKER teaches or suggests a single data set with key identification and key force data for multiple keys."

Examiner would like to point out that -as applicant recognizes and states in arguments- "BARKER teaches that key data is received for one key at a time." The claim limitation as currently stated does not specify that the apparatus is able to receive data for multiple keys at the SAME time. The way the claims are currently worded and as Examiner has interpreted is that the apparatus is able to receive data for more than one key, which BARKER teaches in Fig. 2 and in colun 3, lines 50-20.

CLAIM 17 (Page 18 of arguments) recites "receiving a registration from a first application program requesting keyboard input data and key force data; receiving a registration from a second application program requesting keyboard input data but not requesting key force data." In the previous Office Action, BARKER is shown to teach all of the claim limitation and Examiner took Office Notice that it was known in the art to include a first and second application in order to properly carry out the functionality of the apparatus.

Applicant argues that (1) "There would be no reason for an application in the computer to request force data, as the hardware has already determines what the key force data means" (2) "BARKER says nothing about 'prompts' in the flowchart of Fig. 2" (3) "BARKER does not teach that the described apparatus is able to communicate information in regards to both which key is pressed and key force data... only that key scan data byte (and not the force itself) is sent to a computer"

Examiner would like to point out that (1) Even if the hardware already determines what the key force data means does not prevent one from implementing the use of at least one application program to utilize the key force data and/or input data. IEEE's Authoritative Dictionary of IEEE Standard Terms, 7th Edition defines Application Program as "A program executed with the processor in user mode." According to the same source, a processor is considered a hardware. In other words it is possible to have an application program (software) work with the existing hardware (2) Fig. 2 of BARKER may not teach explicitly of "prompts" but the very first step in the flow chart is "start," where start can be interpreted as prompt (3) As previous Office Action showed, BARKER is shown to teach of being able to generate which key is pressed and key force data in Fig. 2; but BARKER is not relied upon as to being able to communicate both key identification and key force data. Further, the claim language never states of the apparatus being able to "communicate information." The claim limitations reads that the apparatus is able to receive and generate, and in this respects the teachings of BARKER does read on the claim limitations.